IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.MC.No. 5066 of 2001()

CRRP.8/1999 of SESSIONS COURT, THODUPUZHA
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PETITIONER: COMPLAINANT

M.R.RAJAGOPAL, LAXMI FRUIT STALL,
MUNNAR, K.D.H., VILLAGE

BY ADV. SRI.SIBY MATHEW

RESPONDENTS: ACCUSED & STATE
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1. M.MADASWAMY, UPPER SEVEN
MALAI DIVISION, SEVEN MALAI ESTATE,
MUNNAR P.O.

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

K.R. UDAYABHANU, J.

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CRL.M.C.NO. 5066 OF 2001

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DATED THIS THE 10th October 2007

ORDER

The petitioner is the complainant in C.C.No.24/1997 in the Court of the Judicial First Class Magistrate, Devikulam with respect to the offence under Section 138 of the Negotiable Instruments Act. The grievance of the petitioner/complainant is that although the accused have been convicted, he has been sentenced only to pay a fine of Rs.5000/- and in default to undergo simple imprisonment for one month. The cheque amount involved is Rs.50,000/-. Although the matter was taken up by the complainant before the Sessions Court in Crl.R.P.No. 8/1999, the above court declined to intervene observing that the sentence is the discretion of the trial court. The petitioner herein has relied on the decision in **Anil Kumar** v. **Shammy, 2002(3)KLT 852**. I find that the attitude of the Sessions

Judge in disposing of the revision filed by the complainant is grossly improper. I find that the sentence is liable to be modified. In the circumstances, the sentence imposed for the offence under Section 138 of the Negotiable Instrument Act is modified to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- to the complainant/petitioner and in default to undergo simple imprisonment for three months. the Crl.M.C.is allowed accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NO. 5066 OF 2001

ORDER

10-10-2007